

37 Am. Jur. 2d Fraud and Deceit § 121

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Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

2. Knowledge of Falsity

§ 121. Duty to know facts; innocent misrepresentations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) 13(2)

It is very generally held that scienter, as a basis for a charge of fraud or deceit, may be proved by showing that the special situation or means of knowledge of the person making the representations are such as to make it the person's duty to know whether they are true or false.¹ Insofar as the element of knowledge is concerned, false representations may be ground for relief where the person making them ought to know,² or it is the person's duty to know,³ or the person has the means of knowing⁴ the truth. The rule applies even though the party making the statements does not know that they are false.⁵

Under some authority, an innocent misrepresentation is as much a legal fraud as an intended misrepresentation and the good faith of a party in making what proves to be a material misrepresentation is immaterial as to the question whether there was an actionable fraud if the other party acted on the misrepresentation to his or her detriment.⁶

In at least one jurisdiction, there is a separate tort of innocent misrepresentation, which, in contrast to the tort of negligent misrepresentation,⁷ is predicated on principles of warranty.⁸

The doctrine of innocent misrepresentation, in connection with obtaining a contract, recognizes that, if there was in fact a misrepresentation, although made innocently, and its deceptive influence was effective, the consequences to the plaintiff being as serious as though it had proceeded from a vicious purpose, he or she would have a right of action for the damages caused thereby either at law or in equity.⁹ While it is unnecessary to prove that the person making the representation had knowledge that the statements were false, for a claim of innocent misrepresentation, it is necessary to show privity of contract.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Even assuming that employee was in a fiduciary relationship with employer and employer's parent company, there was no evidence that employee knew or should have known that he possessed special knowledge of information relating to the details of transactions between the minority-owned business enterprise (MBE) that employee founded, his employer, and employer's parent company, or that employer and employer's parent company were misled by statements regarding the creation of the MBE, thus precluding employer's and parent company's fraud and misrepresentation claims against employee under Minnesota law. [Reisdorf v. i3, LLC, 129 F. Supp. 3d 751 \(D. Minn. 2015\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Hillock v. Idaho Title & Trust Co., 22 Idaho 440, 126 P. 612 \(1912\); Davis v. Central Land Co., 162 Iowa 269, 143 N.W. 1073 \(1913\).](#)
- 2 [Lehigh Zinc & Iron Co. v. Bamford, 150 U.S. 665, 14 S. Ct. 219, 37 L. Ed. 1215 \(1893\); Johnnycake Mountain Associates v. Ochs, 104 Conn. App. 194, 932 A.2d 472 \(2007\).](#)
- 3 [Wolford v. Children's Home Society of West Virginia, 17 F. Supp. 2d 577 \(S.D. W. Va. 1998\) \(applying West Virginia law\); Johnnycake Mountain Associates v. Ochs, 104 Conn. App. 194, 932 A.2d 472 \(2007\); Cordial v. Ernst & Young, 199 W. Va. 119, 483 S.E.2d 248 \(1996\).](#)
- 4 [Johnnycake Mountain Associates v. Ochs, 104 Conn. App. 194, 932 A.2d 472 \(2007\);](#)
Under West Virginia law, plaintiff does not need to prove that the defendant actually knew the representations were false if the defendant was in a position to know, and had a duty to know, whether the representations were true or false. [Wolford v. Children's Home Society of West Virginia, 17 F. Supp. 2d 577 \(S.D. W. Va. 1998\)](#).
- 5 [Richard v. A. Waldman & Sons, Inc., 155 Conn. 343, 232 A.2d 307 \(1967\); Clark v. Haggard, 141 Conn. 668, 109 A.2d 358, 54 A.L.R.2d 655 \(1954\).](#)
- 6 [Billy Barnes Enterprises, Inc. v. Williams, 982 So. 2d 494 \(Ala. 2007\).](#)
- 7 [§ 128.](#)
- 8 [Kramer v. Petisi, 285 Conn. 674, 940 A.2d 800 \(2008\).](#)
- 9 [Titan Ins. Co. v. Hyten, 491 Mich. 547, 817 N.W.2d 562 \(2012\).](#)
- 10 [Unibar Maintenance Services, Inc. v. Saigh, 283 Mich. App. 609, 769 N.W.2d 911 \(2009\).](#)

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